THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.07.2007

WP (C) 11294/2004

SHRI DHARAM DEV ....Petitioner

-versus-

THE SECRETARY GOVT. OF INDIA & ANR. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr A.K. Mishra
For the Respondents : Mr Suresh Kait,

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This is a petition seeking a direction to the respondents to grant freedom fighters Pension to the petitioner under the Swatantrata Sainik Samman Pension Scheme, 1980. The claim of the petitioner is that he had gone underground for about nine months from 10.9.1942 to 13.9.1943. He had moved an application under the said Scheme which was rejected. The

ground for rejection was that the petitioner had not provided ample evidence as required under the Scheme.

2. As per the said Scheme when a person claims pension for having gone underground on account of his participation in the freedom struggle, he has to establish that he went underground for a period of more than six months. He has also to establish that he was a proclaimed offender or one on whom an award for arrest was announced or one for whose detention, an order was issued but not served. Under the Scheme, in the first instance, documentary evidence by way of orders of a Court or Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention is required to be produced. The Scheme further provides that in case records of the relevant period are not available, secondary evidence in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter, who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered. Of course, the proviso is that the State Government/Union Territory concerned, after due verification of the claim and its genuineness, certifies that documentary evidence in the form of official records in support of the claimed sufferings were not available.

3. According to the respondent, the State Government/Union Territory has not certified that the documentary evidence is not available. It has also been pointed out by the learned counsel for the respondent that the Delhi Government has also rejected the claim of the petitioner for the grant of pension under the Delhi Union Territory Freedom Fighter Pension Scheme. However, that was not granted because it was observed that "underground sufferings" were not covered under the Scheme. Under the Swatantra Sainik Samman Pension Scheme, 1980, the category of freedom fighters having gone underground is specifically covered and, therefore, the non-grant of the pension under the Delhi Scheme would not come in the way of the petitioner's eligibility to pension under the Central Scheme.

4. The learned counsel for the petitioner pointed out that the petitioner had also filed a copy of a letter dated 3.3.1938 written by the Superintendent of Police, CID, Delhi to the General Manager of Delhi Cloth Mills, Bara Hindu Rao Delhi (where the petitioner was then working) wherein, it was clearly pointed out that the petitioner was being investigated as having association with some terrorist groups which were directly linked with the Indian National Congress (INC). It was also noted in the said letter that the petitioner's activities were being closely watched and that he was involved in anti-regime activities by propagating the workers of the mill, which was undesirable. The learned counsel has

drawn my attention to a document at Annexure "C" which is a letter written by the petitioner's son to the SHO, P.S. Karol Bagh with respect to the old record pertaining to his father. On the said letter there is an endorsement from the Police Station that no such record was available after 55 years.

5. Since no records were available or forthcoming the petitioner submitted two Personal Knowledge Certificates from prominent freedom fighters who had proven jail suffering of a minimum of two years. The first certificate was of Mr Lajja Ram Chaudhary, who had suffered actual imprisonment for more than five years during the freedom struggle. He certified that the petitioner remained underground for more than six months as he was one for whose detention orders were issued but had evaded arrest. This certificate was issued on 31.7.1998. Another certificate was issued by Mr Data Ram, who was also a freedom fighter who had undergone actual imprisonment for more than five years. This certificate is also to the same effect and it was issued in Delhi on 16.9.1998.

6. Having considered the facts and circumstances of the case, I observe that there are two acknowledged freedom fighters, who had both undergone actual imprisonment for more than five years, who had certified that the petitioner had gone underground during and in connection with the

freedom struggle. This should be accepted by the respondent, particularly when the original documents and the official records are not available and are not forthcoming. The rejection by the Delhi Government of the petitioner's application under the Delhi Scheme would not come in the way of grant of pension in the present Scheme because that rejection was based upon the fact that there was no category for grant of pension for people who had gone underground. Under the present Scheme, there is a specific provision made for this and the petitioner has complied with all the requirements except fulfilling the technicality of getting the certificate from the State Government that documentary evidence and official records are not available. The petitioner is already over 95 years of age and it would not be fair on the part of this Court to further delay the proceedings in this regard and insist upon the technicality of the production of the certificate when the official records are not available. This is particularly so because the petitioner has been able to demonstrate that he did take part in the freedom struggle and that two freedom fighters have certified the fact that the petitioner had gone underground for more than six months for and in the course of the struggle for independence.

7. Accordingly, I dispose of this writ petition by directing the respondent to grant pension to the petitioner under the Scheme.

8. This writ petition is, accordingly, allowed with costs of Rs 10,000/-. The direction be implemented forthwith, not later than three weeks from today.

Dasti.

BADAR DURREZ AHMED
(JUDGE)

July 24, 2007
J